IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/09/2003

CORAM

THE HONOURABLE MR.JUSTICE A.K.RAJAN

Writ Petition No.4637 of 1997

G.Gajalakshmi ..... Petitioner

-Vs-

1. The Presiding Officer
I Additional Labour Court
Chennai 104.

2. Government Stationery and Printing
Department, No.816, Main Road
Chennai 600 002. ..... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, as stated therein.

For Petitioner : Mr.K.V.Ananthakrishnan

For Respondents : Mr.R.Vijaya Kumar
Government Advocate

:ORDER

This writ petition has been filed for the issuance of a writ of certiorarified mandamus, to call for the records connected with the order dated 31.07.1996 made in I.D.No.525 of 1993 on the file of the I Additional Labour Court and to quash the same as illegal and direct the second respondent to reinstate the petitioner with all back wages.

2. The case of the petitioner is as follows:
(i) The petitioner was appointed as a Binder Grade II on temporary basis from 05.01.1989. She was employed through Employment Exchange. The scale of pay was Rs.825-50-900-20-1200. She continued in service till 30.11.1989. Several other persons were also appointed along with the petitioner.
(ii) The second respondent by a letter dated 04.11.1989, extended the service of the petitioner till 30.11.1989 and directed her to report to Government Press, Madurai. There she joined duty and worked till 23.11.1989. After joining the Madurai Government Press, she applied for medical leave from 24.11.1989. She had put up 280 days of continuous service under the second

respondent. Though the petitioner applied for medical leave, she was not continued in service after 23.11.1989. The other persons who were appointed along with the petitioner were terminated subsequently.
(iii) The permanent posts of Binders were filled up in the year 1991 ; the second respondent appointed several persons on permanent basis in the vacancies including those who worked with the petitioner and were terminated in the year 1989; many of her juniors were also appointed in permanent vacancies. The petitioner made representation to the authority concerned to consider her for appointment in a permanent vacancy. But that was not considered. Hence, the petitioner raised an Industrial dispute before the Labour Court for reinstatement on the ground that she become eligible to be made permanent.
(iv) The Labour Court passed an award dismissing the Industrial dispute in ID.No.525 of 1993. challenging the award passed by the Labour Court in the Industrial Dispute, the petitioner has filed the present writ petition.

3. The second respondent has filed a counter wherein it is stated that during 1989, in connection with Election work 120 Binders who were sponsored by the Employment Exchange and selected by the Standing Election Committee, were appointed as Binder Grade II purely on temporary basis for two months from January 1989 and their service was extended upto 30.11.1989 at various spells. Finally on completion of the Election work they were ousted with effect from 30.11.1989. The petitioner is one among them.

4. Further it is stated in the counter that the Election work could not be taken up in the city press alone, the work was distributed to various branches in the State. Since the Election work is a time bound work and should be given top priority, all the persons selected for Binder Grade II post were distributed to all Branches for the speedy execution of work.

5. Further it is stated that as per the Rules, a person can be reappointed without referring to Employment Exchange, if he/she is reappointed within a period of 90 days from the date of termination. As the persons appointed during 1989 were ousted from service on 30.11.1989 and the process of selecting persons was undertaken during April 199 1, i.e., after a long gap of one year and four months, it was not possible to appoint persons who worked during 1989, directly without referring to Employment Exchange. Hence, fresh list of candidates were called for and selection was made by Standing Selection Committee according to their performance in the interview. It is not correct to say the persons who are retrenched along with the petitioner were absorbed subsequently in permanent vacancies. The petitioner was governed by the General Subordinate Service and Government Press Subordinate Service Rules. The Provisions of Industrial Dispute Act cannot be applied in this case. Therefore, the petitioner has no right for reappointment.

6. Further, it is submitted that the petitioner was appointed on 05.01.1989 till 30.06.1989. Thereafter again she worked from 07.07.1989 to 30.09.1989 and once again from 08.11.1989 to 30.11.1989. As per the existing rules, a person sponsored by the employment Exchange, if ousted from service,

should re-register her name in the concerned Employment Exchange within 30 days from the date of ousting to get her original seniority. The petitioner has stated that her name is still found in the register of the Employment Exchange. The petitioner was not sponsored through the Employment Exchange and hence the question of appointing the petitioner in the Department to permanent vacancy during 1991 did not arise. For the above sated reasons, the award passed by the Labour Court is valid and legally sustainable and hence, the writ petition is liable to be dismissed.

7. The learned counsel appearing for the petitioner submitted that the petitioner was in service for more than 280 days within a period of one year and she has to be considered as retrenched employee. Therefore, when a fresh vacancy has arisen in the department, all the retrenched employees should be informed that such vacancies have arisen and they can apply for the post. When such notice is not given, it violates their rights and therefore, not informing of the petitioner entitles the petitioner to get reappointment.

8. In support of his arguments, the learned counsel appearing for the petitioner referred to the Judgment of the Rajasthan High Court in Satyendra Singh Rathore Vs. Rajasthan Rajya Pathya Pustak Mandal, Jaipur reported in (1989 II LLJ 289), wherein it is held that the petitioner can be considered as a workman within the meaning of the Industrial Disputes Act.

9. The learned counsel also relied upon another Judgment reported in Central Bank of India Vs. S.Satyam and others (1996 II LLJ 820), where the Supreme Court has held:
"The benefit of applicability of Section 25-F can be claimed by a workman only if he has been in continuous service for not less than one year as defined in Section 25-B. Any other retrenched workman who does not satisfy this requirement of continuous service for not less than one year cannot avail the benefit of Section 25-F which prescribes the conditions precedent to retrenchment of workman of this category. Section 25-G prescribes the procedure for retrenchment and ordinarily applies the principle of 'last come first go'."
"Section 25-H then provides for re-employment of retrenched workmen. It says that when the employer proposes to take into his employ any persons, he shall, in such a manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment and such retrenched men who offer themselves for reemployment shall have preference over other persons. Rules 77 and 78 of the Industrial Disputes (Central) Rules, 1957 prescribes mode of reemployment. Rule 77 says maintenance of seniority list of all workers in a particular category from which retrenchment is contemplated arranged according to seniority of their service in category and publication of that list. Rule 78 prescribes the mode of reemployment of retrenched workmen. The requirement in Rule 78 is of notice in the manner prescribed to every one of all the retrenched workmen eligible to be considered for reemployment."

As per Rule 77, the employer must maintain the seniority list of workmen in that particular category from which retrenchment is contemplated arranged according to the seniority of their service and they must be informed

as and when vacancy arises.

10. The learned counsel further relied upon an unreported judgment of this Court in W.A.Nos.481 and 482 of 1995, wherein the Division Bench has held:

"Be that as it may, since section 25-H of the Act has been held to be applicable to all retrenched workmen and not necessarily only to those covered by Section 25-F read with section 25-B of the Act and Rule 73 of the Industrial Disputes (Central) Rules, 1957 contemplate the giving of intimation of vacancies by Registered post to every one of all the retrenched workmen eligible to be considered for reemployment to the address given by the worker concerned at the time of retrenchment or thereafter, the management had a duty and obligation to have issued such notice to the workers before us and it is a fact that no such notice has ever been given. Viewed in this context, the worker alone may not be attributed with all the lapse, at any rate. The various decisions of the Apex Court have adopted different approach and apparently depending upon the facts and circumstances of each case and the ultimate attempt was to the justice as warranted in a given case."

"In the light of the factual position and the principles of law noticed by us supra, we are of the view that the workers cannot be denied totally of all reliefs. On an over all consideration and balancing of rights of parties before us and also the other workers who got subsequently appointed and who are not before us, we are of the opinion that the relief that may be granted to the workers before us cannot be at the expense of others. Keeping in view all these aspects, in our view, the ends of justice would be sufficiently met and safeguarded, if the appellants and the writ petitioner before us are directed to be reemployed with effect from the 1st of September, 1997 without an back wages and with continuity of service only from the date on which the respective appellants and the writ petitioner filed the writ petitions before this Court and not for any past period earlier to the said dates."

11. The counsel for the petitioner also relied upon the decision of the Delhi High Court in Govt. of N.C.T. Of Delhi Vs. Hospital Employees Union, Delhi reported in (1997 II LLJ 516), wherein the Delhi High Court has held that under Section 25-H of the Industrial Disputes Act, the person who worked for one year cannot be denied the benefit of Section 25-H. Relying to this Judgment, the learned counsel submitted that the petitioner having worked for more than 280 days, is entitled for reemployment. Therefore, the Labour Court award is liable to be set aside as it is contrary to these decisions.

12. The learned Government Advocate appearing on behalf of the Government submitted that as per the Rules of the government, a person who was temporarily appointed and ousted cannot be reappointed except through the Employment Exchange, when the period exceeds 90 days. If within 90 days, any vacancy had arisen, they would have been reinstated without reference to the Employment Exchange. But, in this case, the Rules specifically provide that they cannot be reemployed. The learned Government Advocate also pointed out that those juniors who were appointed subsequently in the year 1989 were all

sponsored by the Employment Exchange. They were not appointed directly as alleged. The Labour Court has considered all these arguments and the judgments referred to and came to the conclusion that the petitioner is not eligible for reemployment.

13. The Labour Court in its award has held as follows:
The management has admitted that seven or eight persons were ousted along with the petitioner were appointed subsequently. In order to get reappointment, she should have registered her name in the Employment Exchange within 90 days. On the completion of 90 days, unless the names are sponsored through Employment Exchange, no person can be appointed in service. In the list of persons sent by the Employment Exchange on 01.04.1991, the petitioner name did not find place. Therefore, the argument of the petitioner that her non-employment is not legal cannot be accepted. This conclusion of the Labour Court cannot be said to be illegal. The rules applicable in the case of the petitioner is governed by the General Subordinate Service and Government press subordinate service Rules. As per the rules, a person who is originally appointed temporarily, but ousted from service cannot be reappointed after 90 days of such ouster, unless the person is sponsored through Employment Exchange. Only, if any vacancy arises within 90 days, then that person can be reemployed without referring to the employment exchange.

14. The decisions cited by the petitioner has no application to the facts of the case of the petitioner. The termination was on 23.11.198 9; that was accepted by the petitioner; she did not challenge the termination order. Only in 1993, the dispute was raised, aggrieved by the appointment made in the year 1991. The petitioner claims the right since her juniors were given appointment. They were appointed as new appointees and not as retrenched employees. The petitioner inasmuch as accepted the order of termination in the year 1989 and did not raise any dispute thereafter, she cannot claim that right after the laps of four years. The Labour Court has rightly dismissed the Industrial Dispute filed in I.D.No.525 of 1993 and there is no reason to interfere with the award passed by the Labour Court.

15. In the result, the Writ Petition is dismissed. The award passed by the Labour Court is confirmed. No costs.

Index:yes
Internet:yes

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To
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Department, No.816, Main Road
Chennai 600 002.